

Durga Prasad Vs. Bhajan and ors.

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Court : Allahabad

Decided On : Jul-15-1919

Reported in : AIR1919All6(2); (1920)ILR42All50; 58Ind.Cas.487

Judge : P.C. Banerji and ;Wallach, JJ.

Appellant : Durga Prasad

Respondent : Bhajan and ors.

Judgement :

1. This appeal arises out of a suit for redemption of a mortgage made by one Baiju in favour of Jaman, the father of defendants Nos. 1 and

2. Baiju is dead. He left two sons Ram Din and Phunki. Phunki died leaving sons who together with Ram Din have been found to be members of a joint family. Ram Din is the head of that family. He executed a sale-deed of the mortgaged property in favour of the plaintiff, and by virtue of this sale-deed the plaintiff has instituted the present suit for redemption, The defendants are

(1) the sons of the mortgagee and

(2) Ram Dip, the plaintiff's vendor. The Court of first instance dismissed the suit on the ground that it had not been proved that there was legal necessity for the sale made by Ram Din. This decision has been affirmed by the lower Appellate Court. In our opinion the Courts below have erred in dismissing the suit upon the ground

mentioned above. Ram Din is the head of the family and apparently exerted the sales deed in favour of the plaintiff in that capacity. He represents the joint family which has been found to consist of himself and his nephews. No question as to his authority to transfer the property arises in this case as between the mortgagees and the plaintiff. That is a question between him and his co sharers. He has executed the sale deed in the plaintiff's favour and that is not denied. He being the head of the family was competent to execute the sale, but whether as between him and his nephews the sale would be a valid and binding sale is not a question which arises in the present suit. The defendants mortgagees are not entitled to put it forward as an answer to the claim. In our opinion the suit ought to have been tried upon the merits. The rulings to which the Courts below have referred do not seem to us to have any bearing on the present case. There is no question of non-joinder of parties, as Ram Din is the head of the joint family and represents that family and the members thereof. We allow the appeal, set aside the decrees of the Courts below and remand the case to the Court of first instance with directions to re admit the suit upon its original number in the register and try it on the merits. Costs here and hitherto will be costs in the cause and the costs in this Court will include fees on the higher scale.